

HOGAN & HARTSON
L.L.P.

DAVID L. SIERADZKI
PARTNER
(202) 637-6462
DLSIERADZKI@HHLLAW.COM

COLUMBIA SQUARE
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
FAX (202) 637-5910
WWW."LAW.COM

March 25, 2003

RECEIVED

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, D.C. 20554

MAR 25 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, WT Docket No. 02-381

Dear Ms. Dortch:

On behalf of Western Wireless Corp. ("Western Wireless"), I am writing to update and correct the record in the proceeding referred to above.

In initial comments in this proceeding, the South Dakota Telecommunications Association ("SDTA") accused Western Wireless of misrepresenting consumers' billing addresses in reports to the Universal Service Administrative Co. ("USAC") in an attempt to inflate the amount of universal service support it would receive. Western Wireless, in reply comments, showed that this accusation is entirely unfounded: it was USAC, not Western Wireless, that incorrectly characterized certain Western Wireless customer lines as being located on the Pine Ridge Reservation. In fact, Western Wireless had accurately reported that those lines are located in other wire centers in South Dakota in which Western Wireless has been designated as an eligible telecommunications carrier ("ETC"). *Compare SDTA Comments at 21 with Western Wireless Reply Comments at 4-7.*

Western Wireless stated in its Reply Comments that SDTA knew at the time it submitted its comments that its allegations, including a scurrilous and completely unfounded suggestion about "persistent rumours," were untrue. Western Wireless stands by that statement. SDTA was served with a copy of Western Wireless' Response to Comments of South Dakota Telecommunications

No. of Copies rec'd 012
List ABCDE

Marlene H. Dortch

March 25, 2003

Page 2

Association and an accompanying affidavit from Suzie Rao of Western Wireless, filed with the South Dakota Public Utilities Commission in Docket TC98-146 on Dec. 27, 2002. That affidavit clearly explained that Western Wireless had correctly reported the locations of its customer lines in South Dakota, and that USAC's mischaracterization of the location of customer lines in South Dakota was due to an insignificant administrative error by USAC, and not due to any malfeasance by Western Wireless. (Attached are copies of the filing and Ms. Rao's affidavit, together with the certificate of service demonstrating that SDTA was served with copies of these documents.) Although they knew this information, SDTA and its attorneys nevertheless made false statements on the record in comments in the instant proceeding before the FCC. ^{1/}

If you have any questions, please contact me.

Respectfully submitted,



David L. Sieradzki
Counsel for Western Wireless Corp.

Enclosures

cc: John Prendergast

^{1/} In one respect, Western Wireless' Reply Comments contain a minor error that does not substantively affect the merits of its position. Contrary to the statement on page 4 of Western Wireless' Reply Comments, SDTA and its attorneys were not served with a copy of Western Wireless' Jan. 3, 2003 letter to USAC.

03/21/03 09:47 FAX 425 586 8118
03/20/03 13:13 FAX 605 342 9503

WESTERN WIRELESS
GUNDERSON PALMER

049
049

GUNDERSON, PALMER, GOODSSELL & NELSON, LLP

ATTORNEYS AT LAW

WYNN A. GUNDERSON
J. CRISMAN PALMER
G. VERNIE GOODSSELL
JAMES S. NELSON
DANIEL E. ARMSTRONG
TERENCE E. QUINN
DONALD P. KRUDSEN
PATRICK G. GOETZINGER
TALBOT J. WIECZOREK

AMERICAN MEMORIAL LIFE BUILDING
440 MT. RUSHMORE ROAD
POST OFFICE BOX 8045
RAPID CITY, SOUTH DAKOTA 57709-8045

TELEPHONE (605) 342-1078 • FAX (605) 342-9503

ATTORNEYS LICENSED TO PRACTICE IN
SOUTH DAKOTA, NORTH DAKOTA, NEBRASKA
MONTANA, WYOMING, MINNESOTA & CALIFORNIA

PAUL A. SWEDLUND
MARK J. CONROTT
JENNIFER E. TRUCANO
MARTY J. JACKLEY
DAVID E. LUST
THOMAS E. SIMMONS
TERRY LEE WILLIAMS
FAMELA SMYTHE-VARON
ROBERT C. SCHRIMM
SARA FRANKENSTEIN

December 27, 2002

VIA FACSIMILE 1-605-773-3809

And U.S. MAIL

Deb Elofson

Executive Director

SD PUC

500 E Capitol Avenue

Pierre SD 57501

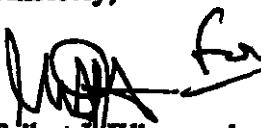
**RE: Docket No. TC98-146 - In the Matter of the Filing by GCC License Corporation
for Designation as an Eligible Telecommunications Carrier
GPGN File No. 000362**

Dear Ms. Elofson:

Enclosed for filing please find Western Wireless' Response to Comments of South Dakota Telecommunications Association with the attached Affidavit of Suzie Rao. The original and ten copies of the Response will be sent today by U.S. mail to your office. The original Affidavit of Suzie Rao will be sent directly to the Commission via Federal Express by Ms. Rao.

If you have any questions, please contact me.

Sincerely,


Talbot J. Wiczorek

TJW:klw

**c: Richard Coit via fax 1-605-224-1637
Brian Meyer via fax 1-605-224-9060
Mark Ayotte via fax 1-651-223-6450
James Blundell via fax 1-425-586-8118**

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE FILING BY GCC LICENSE) DOCKET
CORPORATION FOR DESIGNATION AS AN) TC98-146
ELIGIBLE TELECOMMUNICATIONS CARRIER)**

**RESPONSE TO COMMENTS OF
SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION**

WWC License LLC ("Western Wireless") hereby responds to the Comments filed by the South Dakota Telecommunications Association ("SDTA") in the above matter. As demonstrated below, Western Wireless has satisfied the conditions set forth in the Commission's October 18, 2001 Order designating Western Wireless as an eligible telecommunications carrier ("ETC") in the SDTA areas ("October 18 Designation Order"). Commission Staff has filed no comments or raised any objection to Western Wireless' Compliance Filing. In fact, SDTA's comments do not raise any issue or objection relating to the Compliance Filing. The Commission should dismiss the attempts by SDTA to delay or thwart Western Wireless' competitive universal service offerings under the guise of opposing the Western Wireless Compliance Filing. Since Western Wireless has satisfied the conditions of the October 18 Designation Order, the Commission should not allow SDTA to attempt to relitigate settled issues or attempt to raise federal funding issues under the exclusive jurisdiction and control of the FCC and the Universal Service Administration Company ("USAC").

**I THE COMMISSION'S OCTOBER 18 DESIGNATION ORDER ESTABLISHED
SPECIFIC AND LIMITED REQUIREMENTS FOR A COMPLIANCE FILING**

Western Wireless' designation as an ETC in South Dakota has been before this Commission since August 25, 1998. Evidentiary hearings were held on December 17 and 18, 1998. Although the Commission initially denied Western Wireless' ETC application, that

decision was reversed on appeal. The Circuit Court ordered the adoption of new findings of fact in this case, including that:

GCC currently provides all of the supported services required by the FCC through the existing mobile cellular services.

For areas served by rural telephone companies, GCC meets all applicable criteria for ETC designation except the public interest factor, which was not reached by the Commission and not addressed herein. GCC is entitled to be designated as an ETC in those areas served by rural telephone companies so long as the Commission determines that the designation is in the public interest under 47 U.S.C. § 214(e)(2).

Findings of Fact, Conclusions of Law, and Order, pp. 4, 10 (emphasis added). The Supreme Court affirmed the Circuit Court's Order, and further directed the Commission to act promptly, based on the record evidence, to determine the remaining public interest issue:

Although we do not wish to hamstring the PUC by unreasonably limiting its oversight of the telecommunications industry, we think it vital that there be as little delay as possible in allowing GCC to begin operations in South Dakota. This matter has been delayed for years. Evidence was submitted in 1998 on the public interest question and the issue would have been reached then if the inquiry had not been aborted due primarily to an erroneous application of federal law. Therefore, if, based on the record evidence the PUC finds that the public interest test has been satisfied in the rural areas where GCC is seeking ETC status, then the PUC must award such designation in those areas.

In re GCC License Corp., 623 N.W.2d 474, 483-84 (S.D. 2001) (emphasis added).

After additional briefing and argument, this Commission determined the sole remaining issue before it, and ruled that designating Western Wireless as an ETC served the public interest in accordance with 47 U.S.C. § 214(e)(2). As directed by the Supreme Court, Western Wireless was designated an ETC. October 18 Designation Order, p. 7. The only conditions stated in the Commission's grant of ETC designation were as follows:

1) GCC shall file with the Commission its service agreement it intends to offer to universal service customers; 2) The service agreement will be consistent with the Commission's service quality rules; 3) The service agreement will state that any disputes or claims arising under the service agreement may be subject to the

Commission's jurisdiction; 4) GCC will file its plan for advertising its universal service offering throughout its service area and a list of its local calling service areas; 5) GCC's service agreement will state that a customer may qualify for financial assistance under the federal Link-Up and Lifeline programs and shall provide basic information on how to apply; and 6) GCC shall notify the Commission when it begins to offer its universal service package and in what study areas.

October 18 Designation Order, p. 2. Nothing in the Commission's Order contemplated further proceedings or required approval of the filing.

Western Wireless filed its initial Compliance Filing with the Commission on August 28, 2002 as directed by the October 18 Designation Order. After certain questions were raised, Western Wireless filed amendments to its Compliance Filing on October 11, 2002 and December 2, 2002. These amendments resolved all questions and comments expressed by the Commission and Staff. As amended, Western Wireless' Compliance Filing fully meets the conditions imposed by the Commission as follows:

REQUIREMENT	HOW WESTERN WIRELESS HAS MET THE REQUIREMENT
1) GCC shall file with the Commission its service agreement it intends to offer to universal service customers.	Appendixes B and C of Western Wireless' Compliance Filing are the Service Agreements Western Wireless intends to offer to universal service customers. The Service Agreements have been filed with the Commission.
2) The service agreement will be consistent with the Commission's service quality rules.	Commission Staff agree that the amended Service Agreements (Appendixes B and C of the Compliance Filing) are consistent with the Commission's service quality rules.
3) The service agreement will state that any disputes or claims arising under the service agreement may be subject to the Commission's jurisdiction.	Paragraph 5 of Appendix B and paragraph 33 of Appendix C, the Service Agreements to the Compliance Filing, state "Any disputes or claims arising under this agreement may be subject to the Commission's jurisdiction."

4) GCC will file its plan for advertising its universal service offering throughout its service area and a list of its local calling service areas.	Appendix A of Western Wireless' Compliance Filing is Western Wireless' advertising plan. Exhibit G ₁ and G ₂ list local calling areas for its rate plans. The advertising plan has been filed with the Commission.
5) GCC's service agreement will state that a customer may qualify for financial assistance under the federal Link-Up and Lifeline programs and shall provide basic information on how to apply.	Appendix F contains Western Wireless' Lifeline/Link Up Application forms. Paragraph 1.1.8 of Appendix B and paragraph 9 of Appendix C, the Service Agreements provided with the Compliance Filing, state "[Western Wireless] will provide basic information about reduced rate telecommunications services under the federal Lifeline and Link Up programs. [Western Wireless] will provide Lifeline and Link Up service to customers who request such service and who meet eligibility requirements to qualify for such service. [Western Wireless] will comply with all current and future requirements related to Lifeline and Link Up." Further, the Customer Preference page (Appendix E to the Compliance Filing) asks whether a new customer may be eligible for Lifeline or Link-Up.
6) GCC shall notify the Commission when it begins to offer its universal service package and in what study areas.	Appendix H is the letter that will be sent to the Commission stating that Western Wireless has commenced offering universal service in certain South Dakota study areas.

Staff now agrees that Western Wireless' amended Compliance Filing meets all of the conditions established by the Commission in its October 18 Designation Order. Staff has not submitted any further questions, issues or comments. The Commission should recognize this fact and not allow SDTA to attempt to further litigate settled issues or attempt to raise federal universal service funding issues under the exclusive jurisdiction of the FCC and USAC.

While SDTA's comments purport to relate to the Compliance Filing, SDTA fails to identify any reason the Compliance Filing does not meet any of the six enumerated conditions in the October 18 Designation Order. There is not a single meritorious claim in the SDTA

comments that the Compliance Filing fails to adequately address any specific item. Instead, SDTA seeks to raise new issues, re-argue old issues, and would ultimately have the Commission re-open the record in violation of the Supreme Court's decision. The Commission should reject SDTA's dilatory tactics.

Once the Commission issued its October 18 Designation Order, Western Wireless was an ETC subject only to making a Compliance Filing addressing the six items above. Accordingly, Western Wireless has performed this task to the satisfaction of Staff and the Commission.

II. SDTA'S COMMENTS RELATING TO WESTERN WIRELESS' REPORTING OF LINES TO USAC SHOULD BE DISMISSED BY THE COMMISSION

Most of SDTA's Comments address Western Wireless' reporting of lines to USAC, including blatant and unfounded allegations that Western Wireless has somehow violated the law and misrepresented facts in its federal support filings submitted to USAC. (SDTA Comments, pp. 1-7.) This issue should be rejected as beyond the scope of the Commission's jurisdiction and this proceeding. This issue has nothing to do with Western Wireless' Compliance Filing meeting the terms of the Commission's October 18 Designation Order, and thus cannot bear on whether the Compliance Filing is sufficient. Moreover, SDTA has now raised its concerns directly with USAC, which is the proper forum with authority to address federal universal services funding issues.

Nonetheless, Western Wireless responds to SDTA's allegations because they are patently false and demonstrate SDTA's fundamental misunderstandings of federal universal service funding. All ETCs are allowed – and encouraged – to begin filing line counts with USAC upon filing an ETC petition. Western Wireless was simply following this federal protocol. Moreover, Western Wireless reported its South Dakota lines accurately, by study area, not solely as "Pine Ridge" lines. SDTA's concerns are baseless and should be dismissed by this Commission.

A. Western Wireless Properly Reported Lines as Directed by the FCC and USAC

Four things must happen for a carrier to receive federal universal service funding: 1) reporting of lines, 2) certification, 3) ETC designation, and 4) provision of service. Reporting of lines by a carrier is addressed in 47 C.F.R. §§ 54.307 and 54.802, and is a separate process from certification, designation and provision of service. Because there is a mandatory lag between line count reporting and receipt of funding, USAC's practice is to allow and encourage any carrier, once it has filed an ETC petition and before designation, to begin reporting lines. Affidavit of Suzie Rao, ¶ 4 ("Rao Aff."). This process allows USAC to begin to organize the information and plan ahead in the administration of federal universal service funding. Prior to distributing funding, USAC still must independently determine whether the certification and designation requirements have also been met. Nothing in the FCC's regulations or USAC's guidelines prevents a carrier from filing line counts prior to its roll-out of universal service. In this case, Western Wireless merely reported its South Dakota lines as directed and allowed by USAC. Rao Aff. ¶¶ 4-5.

SDTA's concerns spring from a fundamental misunderstanding of how USAC manages its role as the federal universal service funds administrator. Western Wireless' reporting of lines was consistent with industry practice and USAC's direction. In any case, SDTA has now raised its concerns directly with USAC by letter (SDTA Comments, Letter to Cheryl L. Parrino, USAC, dated December 12, 2002). USAC is the only entity in a position to properly address SDTA's concerns. Accordingly, SDTA's comments relating to Western Wireless' reporting of lines to USAC is not an issue related to Western Wireless' Compliance Filing and therefore should be dismissed by the Commission.

B. Western Wireless Properly Reported its Lines By Study Area

SDTA also alleges that Western Wireless has been dishonest with USAC and the Commission, claiming Western Wireless has reported all of its South Dakota lines as "Pine Ridge" lines. (SDTA Comments, pp. 2-4.) To the contrary, Western Wireless properly reported its lines to USAC as specific to each ETC service area as required by FCC Rules. Rao Aff. ¶ 5. Western Wireless has also contacted USAC, and USAC has confirmed that Western Wireless properly reported its lines by service area. It was USAC that categorized all of Western Wireless' lines under the "Western Wireless (Pine Ridge Reservation)" study area in its report, and USAC indicated that it will take any remedial measures needed. Rao Aff. ¶¶ 6-7. Accordingly, this issue raised by SDTA is without substance, and should be dismissed.

III. THE COMMISSION CANNOT REOPEN THE RECORD OR UNDO ITS OCTOBER 18, 2001, DESIGNATION ORDER

In what appears to be part of its perennial campaign to delay or prevent Western Wireless' competition in the universal service market, SDTA now objects to the Compliance Filing. It does so not by addressing the merits of Western Wireless' compliance with the conditions of the October 18 Designation Order, but by re-raising issues that have already been addressed and by raising purely federal funding issues. The Commission should not – and cannot – reopen the record at this stage of the proceeding.

A. The Commission Cannot Reopen the Record in This Docket

The Commission should reject SDTA's request to schedule further proceedings and investigate Western Wireless' universal service offerings. (SDTA Comments, p. 14.) The Supreme Court clearly directed the Commission to consider the public interest issue on the record evidence, and to designate Western Wireless as an ETC so long as such a finding was made. In re GCC, 623 N.W.2d 474, 484 (S.D. 2001). The Commission made a public interest

finding based on the record evidence and designated Western Wireless as an ETC subject to a simple compliance filing. Now SDTA raises the specter of new hearings and new evidence far beyond the scope of the Supreme Court's mandate and the Commission's October 18 Designation Order. It has long been the law that a lower court (or administrative body) must comply with the directives of a reviewing court:

However wise a man may be, however sound his judgment, however accurate his knowledge and understanding; nevertheless he is bound to subordinate these to the wisdom, judgment, knowledge, and understanding of the Superior Court, whose Order is the law of the case until modified, or until reversed by higher authority.

Kelsch v. Dickenson, 1 N.W.2d 347, 349 (N.D. 1941). Accordingly, the Commission must reject SDTA's request to further condition Western Wireless' ETC designation on further hearings and additional delay.

B. Western Wireless is Not Prohibited From Providing Universal Service Using Alternative Kinds of Customer Equipment

SDTA's attempt to limit Western Wireless' offerings to a certain type of customer equipment, e.g. wireless local loop equipment, does not raise any issue concerning its provision of universal services. (SDTA Comments, pp. 6-7.) Western Wireless explained to the Commission at the initial hearing that it intended to provide universal service offerings using its existing network infrastructure, and demonstrated its current ability to provide all of the FCC's supported services to customers using conventional mobile cellular handsets. The District Court entered findings of fact consistent with this record evidence. Findings of Fact, Conclusions of Law, and Order, ¶¶ 7, 10. Western Wireless also explained that one potential service offering may use a different type of customer equipment – a wireless access unit – to provide additional features that it believed would be valued by customers. Id. ¶ 8. The Court further found that:

The undisputed record evidence demonstrates that the provision of the supported services is the same whether the customer uses a wireless access unit or a

conventional cellular handset. GCC's network infrastructure used to provide the services – the antennae, cell sites, switch, trunk and radio frequency spectrum – is the same. The nature of the services does not change simply because the customer equipment used to transmit and receive the services (i.e. cellular handset vs. wireless access unit) is different. GCC's network infrastructure does not distinguish between calls originated or terminated using a cellular handset or a wireless loop access unit.

Id. ¶ 10 (emphasis added).

Because Western Wireless' network supports the use of various kinds of customer equipment, Western Wireless explained that it would, "over time, 'expand its universal service offering to introduce a mobility component'." October 18 Designation Order, p. 4. Four years after that testimony was taken, this is exactly what Western Wireless is implementing. Western Wireless' actions are fortunate for consumers in South Dakota, as the Commission has made a specific finding that "a mobility component to local telephone service is also a benefit to the public." October 18 Designation Order, p. 4 (emphasis added). This recognized benefit of mobility was a significant factor in the Commission's public interest analysis. Id. Western Wireless is excited to provide this mobility benefit to consumers in South Dakota consistent with the prior orders entered in this docket.

Contrary to what is suggested by SDTA, there is nothing in federal law or the Commission's October 18 Designation Order preventing Western Wireless from offering universal services using any kind of customer equipment that can be used to deliver the FCC's supported services. To the contrary, FCC Rule 54.201(h) is clear in its mandate for a state commission to "designate a common carrier . . . as an eligible telecommunications carrier irrespective of the technology used by such carrier." 47 C.F.R. § 54.201(h). Moreover, it is abundantly clear that the FCC endorses the provision of universal service through wireless technology, and has rejected attempts to prevent wireless carriers from being full participants in the federal universal service program:

We also reject the contention that Western Wireless has not sufficiently specified whether it intends to use its fixed or mobile service to fulfill its ETC obligations. In so doing, we reject the implication that service offered by CMRS providers is ineligible for universal service support. In the *Universal Service Order*, the Commission concluded that universal service support mechanisms and rules should be competitively neutral. The Commission concluded that the principle of competitive neutrality includes technological neutrality. Thus, a common carrier using any technology, including CMRS, may qualify for designation so long as it complies with the section 214(e) eligibility criteria. Western Wireless indicates that it has the ability to offer the supported services using its existing facilities.

Western Wireless Corp. Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming, CC Docket No. 96-45, Memorandum Opinion and Order, DA 00-2896 (rel. Dec. 26, 2000), ¶ 11 (emphasis added); Western Wireless Corporation Petition for Designation as an ETC for the Pine Ridge Reservation in South Dakota, CC Docket 96-45, Memorandum Opinion and Order, FCC 01-283, ¶ 9 (rel. Oct. 5, 2001) (Western Wireless will provide service using existing cellular network); see also Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama, CC Docket No. 96-45, Memorandum Opinion and Order, DA 02-3317 (rel. Dec. 4, 2002) (designating wireless carrier in rural and non-rural areas without limiting customer equipment used).

Accordingly, SDTA's suggestion that Western Wireless is somehow prohibited from providing the supported services using certain customer equipment is contrary to prior orders entered in this docket and FCC directives. The Commission should again reject SDTA's arguments and deny their request to re-litigate these issues yet again.

C. Western Wireless' Universal Service Offerings Are Not Subject to an Affordability Determination

The Commission should outwardly reject SDTA's further attempts to impose an affordability requirement on Western Wireless. SDTA raises a new question about the "affordability" of Western Wireless' universal service offerings. (SDTA Comments, pp. 9-10.)

The Commission's October 18 Designation Order does not provide that Western Wireless' individual service offerings will be subject to an undefined "affordability" determination. SDTA is essentially seeking reconsideration of the Commission's October 18 Designation Order to add such a requirement, but a motion for reconsideration is long past due. Moreover, the absence of any additional requirements for ETC designation (such as affordability) has been addressed and resolved by the South Dakota Supreme Court. On appeal, SDTA sought review of whether the Commission had any authority to impose requirements for ETC designation beyond those enumerated in 47 U.S.C. § 214(e)(1)-(2). In re GCC, 623 N.W.2d at 478, fn. 7. The Supreme Court recognized, "... the circuit court took the PUC at its word that there were no additional requirements." Id. at 482-83. This Commission should not go back on its representations to the Court.

In any event, an affordability requirement would also be preempted by 47 U.S.C. § 332(c)(3)(A), which expressly prohibits a state commission from regulating Western Wireless' rates. Moreover, the SDTA companies did not undergo any affordability evaluation as to their universal service offerings. Finally, to the extent SDTA is asking the Commission to reopen the record, that plainly violates the Supreme Court's prior directive. Accordingly, SDTA's arguments should be rejected.

D. Any "Investigation" into Western Wireless' Compliance With ETC Requirements is Premature

As noted above, it is undisputed that Western Wireless' Compliance Filing meets the conditions contained in the Commission's October 18 Designation Order. Yet, SDTA asks the Commission to nevertheless "conduct a further investigation" into its universal service offerings. No such investigation was contemplated or can be reasonably required pursuant to the terms of the prior orders entered in this docket.

SDTA's attempt to raise "serious concerns" regarding Western Wireless' compliance with applicable service quality requirements is without merit. (SDTA Comments, pp. 7-9.) SDTA does nothing more than quote various service quality regulations applicable to landline carriers and suggest a groundless need to "examine more closely" whether Western Wireless' service is "consistent with these and other applicable service quality standards." (*Id.* at 8.) At this state of the proceeding, it is neither the time nor place for SDTA to attempt to relitigate service quality issues. In fact, SDTA's Comments on service quality smack of its earlier claims of the "chicken and egg" seeking to require compliance with applicable ETC criteria before being designated.

What SDTA also ignores is that Western Wireless' compliance with service quality issues is fully addressed in the Compliance Filing. The Service Agreements now fully addresses how Western Wireless' universal service offerings will be consistent with the Commission's service quality rules and vests the Commission with jurisdiction over claims or disputes.

The Supreme Court directed the Commission that if it made an affirmative public interest finding it was to designate Western Wireless as an ETC and allow it to provide the service. In re GCC, 623 N.W.2d at 483-84. The law is abundantly clear – especially in South Dakota – that an ETC must be given a reasonable opportunity to provide universal services once designated. In re GCC, 623 N.W.2d at 481. See also Western Wireless Corporation's Petition for Preemption of an Order of the South Dakota Commission, CC Docket No. 96-45, Declaratory Ruling, FCC 00-248 (rel. Aug. 10, 2000). SDTA's call for an investigation into Western Wireless' provision of universal services is predictable, since SDTA has taken every opportunity to try to obstruct competition from Western Wireless.

The Commission has already addressed and rejected these delay tactics of SDTA. In its October 18 Designation Order, the Commission stated:

In a similar argument, SDITC points out that the FCC is currently addressing the issues of interstate access reform for rate of return carriers and is considering further changes in the universal service support for rural telephone companies. SDITC states that the outcome of these proceedings will have a "significant impact on whether designating GCC as an additional ETC would be in the public interest." SDITC Supplemental Rebuttal Brief at 32. Again, the Commission does not believe that it can delay, or indefinitely postpone, the designation of additional ETCs due to the lack of finality or the fact that future changes could affect universal service funding.

October 18 Designation Order, p. 4 (emphasis added). Consistent with prior orders in this docket and without a shred of evidence to support any non-compliance with Western Wireless' ETC designation, the Commission should reject SDTA's attempt to investigate Western Wireless' universal service offerings.

CONCLUSION

The time has come for South Dakota's consumers to enjoy the benefits of Western Wireless' competitive universal service offerings. Western Wireless has fully complied with the conditions established in the October 18 Designation Order. Its Service Agreement and advertising plan have been filed and amended to address questions of the Commission and Staff. SDTA's recent comments do not raise issues or objections relating to the Compliance Filing. Rather, SDTA merely seeks to raise new federal universal service funding issues beyond the prerogative of this Commission and to re-argue old issues beyond the scope of this proceeding. SDTA's comments should be dismissed.

Respectfully submitted,

Dated: December 27, 2002

Talbot J. Wleczorek
GUNDERSON, PALMER, GOODSSELL
& NELSON, LLP
440 Mount Rushmore Road
3rd and 4th Floors
P.O. Box 8045
Rapid City, South Dakota 57709-8045
Telephone: (605) 342-1078
Fax: (605) 342-9503

Mark J. Ayotte, Esq.
Philip R. Schenkenberg, Esq.
BRIGGS AND MORGAN, P.A.
2200 First National Bank Building
332 Minnesota Street
Saint Paul, Minnesota 55101
Telephone No. (651) 223-6600
Fax No.: (651) 223-6450

Attorneys for WWC License L.L.C.

1482152v1

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY GCC LICENSE)	DOCKET
CORPORATION FOR DESIGNATION AS AN)	TC98-146
ELIGIBLE TELECOMMUNICATIONS CARRIER)	

AFFIDAVIT OF SUZIE RAO

STATE OF WASHINGTON)	
) ss.	
COUNTY OF KING)	

1. My name is Suzie Rao. I am Regulatory Counsel, External Affairs for Western Wireless Corporation. I make ~~this~~ Affidavit **in support** of Western Wireless' Response to Comments of South Dakota Telecommunications Association.

2. I ~~was~~ involved in preparing Western Wireless' Compliance Filing dated August **28,2002** and the amendments filed on October 11 and December 2.

3. To my knowledge, the South Dakota Public Utilities Commission and Staff believe Western Wireless' Compliance Filing, as amended, satisfactorily **addresses** the ~~six~~ items listed on the Commission's October **18,2001** Order designating Western Wireless **as** an ETC in rural telephone company exchanges.

4. Western Wireless filed its South Dakota line counts with the ~~Universal~~ Service Administration Company ("USAC") anticipating **those lines** would become eligible universal service lines. Because ~~there~~ is a lag between line count reporting and receipt of funding, USAC encourages **any** carrier to begin reporting its lines **as soon as an** ETC petition is filed. **This** is industry practice and fully consistent with how USAC **administers** the universal service program.

5. Western Wireless reported its lines in **SDTA** company **areas** by study area, and separately reported its lines ~~on~~ the Pine Ridge Reservation.

6. Because a USAC report shows all South Dakota lines under a "Pine Ridge" study area code, I contacted USAC to inquire whether Western Wireless' reporting was correct and appropriate.

7. A USAC representative confirmed to me that Western Wireless had reported its lines properly, and that USAC had combined all of those lines for its reporting purposes. This person also indicated that USAC will correct its report if it deems that to be necessary.

AFFIANT. SAYS NOTHING FURTHER.

Suzie Rao
Suzie Rao

Subscribed and sworn to before me
this 24th day of December, 2002.

Lori L. Dierst
Notary Public



03/21/03 09:47 FAX 425 588 8118
03/20/03 13:13 FAX 605 342 9503

WESTERN WIRELESS
GUNDERSON PALMER

048
048

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE SOUTH DAKOTA

IN THE MATTER OF

THE FILING BY GCC LICENSE CORPORATION
FOR DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER

DOCKET NO: TC98-146


CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27th day of December, 2002, I served a true and correct copy of the Response to Comments of South Dakota Telecommunications Association by fax and by U.S. Mail, postage prepaid, to:

FAX 1-605-224-9060
Brian B. Meyer
Meyer and Rogers
PO Box 1117
320 E. Capitol Ave
Pierre SD 57501-1117

FAX 1-605-224-1637
Richard D. Coit
Executive Director and General Counsel
SDTA
PO Box 57
Pierre SD 57501-0057

GUNDERSON, PALMER, GOODSSELL
& NELSON, LLP



Talbot J. Wiczorek
Attorney for Western Wireless Corporation
PO Box 8045
Rapid City SD 57709
1-605-342-1078